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Taxation: Are College Social Fraternities Exempt from Taxation Under Section 170 of the Kentucky Constitution?

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but that Section 29 and the First Amendment to the Constitution limits this right where the issue of freedom of speech is involved.

Specifically, it would be noted in the Brinkley case that (1) advertising is not free speech; (2) that the denial of a license to operate because of the general character of the programs offered by a station has nothing to do with freedom of speech although it does, of course, necessarily involve censorship of such programs.

In the Shuler case it would be noted that (1) the commission did not purport to pass judgment upon the general character of the programs offered by the station, but confined itself exclusively to the three hours during which Shuler broadcast; (2) that comment upon religion, public officials, civic organizations and affairs, comes definitely under the heading of freedom of speech, and that the guaranty in Section 29 of the radio act and in the First Amendment to the Constitution would therefore apply.

BYRON PUMPHREY.

TAXATION: ARE COLLEGE SOCIAL FRATERNITIES EXEMPT FROM TAXATION UNDER SECTION 170 OF THE KENTUCKY CONSTITUTION?—Section 170 of the Kentucky Constitution provides that "there shall be exempt from taxation . . . institutions of education not used or employed for gain by any person or corporation, and the income of which is devoted solely to the cause of education."

Our problem is to determine whether college social fraternities in Kentucky are exempt from taxation under the above constitutional provision.

For the past half century college fraternities [using the word "fraternity" in its generic sense which includes organizations composed of either or both sexes, *State v. Allen*, 189 Ind. 369, 127 N. E. 145 (1920)], have been playing an increasingly important part in the educational systems of the United States, and of Kentucky. These organizations play an active part in determining the policies of the schools of which they are a part; they are a part of our ever progressing training of men and women to become better adapted to fight life's battles.

Webster's Unabridged Dictionary defines "education" as the importation or acquisition of knowledge, skill or discipline of character. In the case of *German Gymnastic Ass'n of Louisville v. City of Louisville*, 117 Ky. 958, 80 S. W. 201 (1904), the court, holding that a physical culture school was an educational institution within the meaning of Section 170 of the Kentucky Constitution, cited with approval the case of *Ruohs v. Backer*, 6 Heisk (Tenn.) 395, 19 Am. Rep. 598 (1871), which held that in its broadest sense education comprehends not merely the instruction received at school or college, but the whole course of training, moral, intellectual, or physical.

Who would deny that a college social fraternity falls within the broad definitions of education as given by the dictionary and by the

Kentucky and Tennessee courts above? In the case of *State v. Allen*, *supra*, the Indiana court, in holding a fraternity exempt from taxation under a constitutional provision exempting property used for educational purposes, said that a Greek letter fraternity in a college is dominantly an educational institution—the students pursue in the fraternity house the course of study prescribed by the university; they are subject to the rules and regulations of the university. The court, in refutation of the contention that a fraternity was primarily a rooming house for the members thereof—*Phi Beta Epsilon Corporation v. The City of Boston*, 182 Mass. 457, 65 N. E. 824 (1903); *Knox College v. Board of Review of Knox County*, 308 Ill. 160, 139 N. E. 56 (1923)—said that “because some members of this fraternity board and sleep in this building, and pay what it costs to run the building, does not make the dominant use boarding and lodging. Every human being must eat and sleep to live; but this does not make the dominant purpose in life eating and sleeping.” The dominant purpose to which property is put is determining as to whether or not property falls within a tax exemption clause. *People v. Omega Chapter of Psi Upsilon Fraternity*, 335 Ill. 317, 167 N. E. 16 (1929).

Although generally there must be a strict construction of taxation exemption clauses, yet the better rule is that a liberal, rather than a strict, construction shall be given to provisions for exemption of educational, religious, and charitable property or institutions. 2 Cooley, *Taxation* (4th ed.), sec. 673; *State v. Fisk University*, 87 Tenn. 281, 10 S. W. 286 (1889); *Adams County v. Catholic Diocese of Natchez*, 110 Miss. 890, 71 So. 17 (1916). *Contra: Griswold v. Quinn*, 97 Kan. 611, 156 Pac. 761 (1916). As far as the writer has been able to ascertain, there are no cases expressly stating Kentucky's stand on the matter, but it is reasonable to infer that Kentucky would line up with the said better view because, in the case of *Com. v. Berea College*, 149 Ky. 95, 147 S. W. 929 (1912), the court, in holding exempt from taxation under Section 170 of the Kentucky Constitution, a laundry, a printing shop, a hotel, a supply store, and other properties operated in connection with the college, such institutions being maintained for the purpose of affording the students a means of livelihood and for the purpose of giving them industrial training, evidently did not construe the said constitutional provision very strictly. In the case of *Louisville College of Pharmacy v. City of Louisville*, 26 Ky. L. Rep. 825, 82 S. W. 610 (1904), the court, in holding that the school of pharmacy was an educational institution within the meaning of Section 170 of the Kentucky Constitution, said that “the Constitutional Convention did not use the words ‘institutions of education’ in any narrow or restricted sense. It was used in its broadest and most comprehensive sense.” It has been shown *supra* that it would not be unreasonable to, rather than it would be unreasonable not to, include the college fraternities in the broad definition of educational institutions. Thus would not the Ken-

tucky Court of Appeals hold that a college fraternity is an educational institution within the meaning of Section 170 of the Kentucky Constitution?

A fraternity is not run for profit. The members thereof pay only so much as is necessary to defray the actual operating expenses of the institution. In Section 170 of the Kentucky Constitution, we find that the educational institutions which are exempt from taxation are those educational institutions, "the income of which is devoted *solely* to the cause of education." The Illinois Supreme Court, in the case of *People v. Omega Chapter of Psi Upsilon Fraternity, supra*, held that, despite the fact that the phrase "*exclusively* for school purposes" was used in an educational institution taxation exemption clause, yet "*primarily* for school purposes" was meant. *Solely* and *exclusively* are practically synonymous terms. Would it not be logical to say that the said phrase in the Kentucky Constitution means "the income of which is devoted *primarily* to the cause of education"? We have seen that the better view is that the primary purpose of a fraternity is educational. *State v. Allen, supra*. To use *solely* in the said Kentucky Constitutional provision in a very strict sense would mean that, if one cent of the income of an educational institution were used for anything other than the cause of education, such educational institution would be deprived of the taxation exemption which the Constitutional Convention intended for it; it would create a gross injustice. We have seen *supra* that taxation exemption clauses relating to educational institutions are to be given a very liberal interpretation.

Of course it will be contended that there are salaries paid to some employees of a fraternity, and hence, in a sense, the fraternity is run for the gain of those persons, taking away the fraternity's right to tax exemption. But the Kentucky Court of Appeals, in the case of *Com. v. Hamilton College*, 125 Ky. 329, 101 S. W. 405 (1907), expressly repudiated this contention when it said that the constitutional provision under consideration does not mean that no person connected with an educational institution shall receive private gain, for to so contend would be to contend that the exemption from taxation of educational institutions was a nullity—someone in practically all educational institutions is compensated for his services.

In the case of *Beta Theta Pi Corp. v. Board of Comrs. of Cleveland County*, 108 Okla. 78, 234 Pac. 354 (1925), a statute exempting fraternities from taxation was held to be not contra to a constitutional provision [Sec. 6, Art. 10 of the state constitution, adopting a statute of the Oklahoma Territory, which provided that the only property to be exempt from taxation is "the grounds and buildings of . . . benevolent . . . institutions, . . . (and) colleges . . . devoted solely to appropriate objects of these institutions . . . and not leased or otherwise used with a view of pecuniary profit."], the court saying that the pur-

pose of a college fraternity is to promote educational, moral and social culture, and that a fraternity is not run for pecuniary profit.

The Illinois Supreme Court, in *People v. Omega Chapter of Psi Upsilon Fraternity*, *supra*, held that college fraternities were exempt from taxation under Illinois Statutes, Ch. 120, Sec. 2, which exempted from taxation "all property used exclusively for school . . . purposes . . . and not used with a view of profit." This case, whose decision was based on a statute which is almost identical with Section 170 of the Kentucky Constitution, represents the better modern attitude toward college fraternities as educational institutions, as evidenced by the fact that, although the court made no mention of the case of *Knox College v. Board of Review of Knox County*, *supra*, yet, as it is of a later date, it must be given precedence over the Knox College case.

From the foregoing, this writer is of the opinion that the Kentucky Court of Appeals, in the event the question of whether college fraternities are exempt from taxation under Section 170 of the Kentucky Constitution comes before them for adjudication, should hold that they are exempt.

WILLIAM MELLOR.

TAXATION—CAN COLLEGE FRATERNITY PROPERTY BE EXEMPT IN KENTUCKY?—CONTRA VIEW.—Section 170 of the Kentucky Constitution dealing with exemptions from taxation, exempts "institutions of purely public charity and institutions of education not used or employed for gain by any person or corporation, and the income from which is devoted solely to the cause of education."

Does college fraternity property come within the exemption? Is a fraternity house an institution of purely public charity, or an institution of education within the meaning of Section 170?

While there are no cases bearing directly on the subject in Kentucky, a study of the constitutional provision and similar constitutional provisions in other states where cases have arisen, leads one to believe that college fraternity property does not come within the exemption, and that a statute exempting such property from taxation would be invalid.

A leading case, *People v. Alpha Phi of Phi Kappa Sigma Educational Association of University of Chicago*, 326 Ill. 573, 158 N. E. 213 (1927), holds that a fraternity is not a public charity, although it may be the means of helping some members through school. Only members of the fraternity are benefitted thereby, and they are chosen under rules of the societies themselves and not by virtue of attendance at the school. To constitute a public charity, the benefit must not be conferred on definite persons, or defined individuals, but must be conferred on indefinite persons composing the public, or some part of the public; but the indefinite clause may be one sex, or the inhabitants of a particular city or town, or members of particular religious or secular organiza-